



United States Mission to the OSCE

Reply Of The United States Delegation To The Human Dimension Implementation Meeting, October 4-15, 2004

As delivered by Mr. Marshall Brown, Delegation Member,
October 7, 2004

Mr. Moderator,

In past meetings the United States delegation has noted the fact that U.S. law on the imposition of the death penalty is in constant ferment. This is inherent in our system of government. The decision on whether to impose the death penalty is something that is decided by our people, through representatives in our legislatures and through judges in our courts. International law does not prohibit capital punishment but limits its application to the most serious crimes and requires certain safeguards, including due process.

The U.S. Supreme Court has strictly limited the application of the death penalty throughout the United States in a manner that conforms to the international obligations that the United States has adopted. At the same time, the legislatures of the individual states have the power to further limit the application of the death penalty for cases within their competence.

I would like to call to your attention the following developments within the past year on the subject of the execution of juveniles, at the national level and at the state level:

Perhaps the most important is the decision by the United States Supreme Court on January 26, 2004, that it will re-examine the constitutionality of executing juvenile offenders. As we had noted last year to the participants at this meeting, the Missouri Supreme Court ruled in August 2003 that the execution of those who committed crimes while under the age of 18 violates evolving standards of decency and is therefore prohibited by the Eighth Amendment of the United States Constitution. This ruling has now been brought to the U.S Supreme Court.

This case, *Roper v. Simmons*, will be an important case to watch because the U.S. Supreme Court is being asked to re-visit a decision it made in 1989, when the Court held that the execution of individuals who commit crimes when they are 16 or 17 years old was not inconsistent with the U.S. Constitution. It is possible that its decision will be based, at least in part, on whether there have been significant developments in the law and society that necessitate reconsideration of this precedent. The October term of the U.S. Supreme Court began on October 4 and, as I understand it, the case is set for argument on October 13. Since *Roper* is pending, the Supreme Court has granted stays of execution for three juvenile offenders who had been scheduled for execution in Texas.

There have also been some developments at the state level:

The Governors of South Dakota and Wyoming both signed into law legislation raising the age of eligibility for the death penalty in their respective states to 18.

On December 8, 2003, the Governor of Kentucky commuted the death sentence of Kevin Stanford, the only juvenile offender on Kentucky's death row. It was Stanford's case in which a plurality of U.S. Supreme Court Justices held that it was not unconstitutional to execute 16 and 17-year-old offenders in *Stanford v. Kentucky* in 1989.

The issues raised in these cases are of great interest to the American people and I can assure you that there will be much discussion of *Roper* in our media and by NGOs, who are free to engage in advocacy on this issue. Such frank exchanges of views contribute to the Court's analysis of what constitutes "evolving standards of decency." And it is through discussions, such as we are having in this room, that we can share national experiences in how we deal with such sensitive matters as moral culpability, retribution, and deterrence in democratic societies.

Mr. Moderator, I want to underscore my delegation's view that information about death penalty cases, including the names of those sentenced to death, should be made public. I would note that this is consistent with the 1990 Copenhagen document.

In conclusion, as this debate on the death penalty continues, I can assure you that the United States will continue to respect its international legal obligations.